Supreme Court, U.S.
FILED
MAR 6 - 2015
OFFICE OF THE CLERK

Nos. 14-556, 14-562, 14-571 and 14-574

IN THE

# Supreme Court of the United States

JAMES OBERGEFELL, ET AL., AND BRITTANI HENRY, ET AL., *PETITIONERS*,

v.

RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL., *RESPONDENTS*.

VALERIA TANCO, ET AL., *PETITIONERS*,

v.

WILLIAM EDWARD "BILL" HASLAM, GOVERNOR OF TENNESSEE, ET AL., *RESPONDENTS*.

APRIL DEBOER, ET AL., *PETITIONERS*,

v.

RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL., *RESPONDENTS*.

GREGORY BOURKE, ET AL., AND TIMOTHY LOVE, ET AL., *PETITIONERS*,

v.

STEVE BESHEAR, GOVERNOR OF KENTUCKY, ET AL., *RESPONDENTS*.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF FOR GARY J. GATES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

ADAM P. ROMERO
THE WILLIAMS INSTITUTE
UCLA SCHOOL OF LAW
385 Charles E. Young Dr.
Los Angeles, CA 90095
(310) 825-8858

J. SCOTT BALLENGER
*Counsel of Record*
MELISSA ARBUS SHERRY
ANGELA WALKER*
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2200
scott.ballenger@lw.com

*Admitted in California only; all work supervised by a member of the DC Bar

*Counsel for Amicus Curiae*

## TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... iii

INTEREST OF AMICUS CURIAE ..... 1

SUMMARY OF ARGUMENT ..... 3

ARGUMENT ..... 7

I. SAME-SEX COUPLES ARE COMMON THROUGHOUT THE UNITED STATES AND THE SIXTH CIRCUIT AND ARE RAISING MANY CHILDREN, INCLUDING AN OUTSIZED SHARE OF ADOPTED AND FOSTER CHILDREN ..... 7

A. Same-Sex Couples, Married And Unmarried, Are Common Throughout The United States And Reflect The Diversity Of Our Country ..... 7

B. Same-Sex Couples, And Particularly Married Same-Sex Couples, Are Raising Large Numbers Of Children And An Outsized Share Of Adopted And Foster Children ..... 10

II. MANY LGBT ADULTS WANT TO MARRY; THEY HAVE ATTITUDES TOWARD MARRIAGE, AND DIVORCE RATES, SIMILAR TO THE GENERAL POPULATION; AND ALLOWING SAME-SEX COUPLES TO MARRY DOES NOT ALTER THE BEHAVIOR OF DIFFERENT-SEX COUPLES ..... 15

## TABLE OF CONTENTS—Continued

Page

III. SAME-SEX COUPLES RAISING CHILDREN ARE ECONOMICALLY VULNERABLE ..... 19

IV. MARRIED SAME-SEX COUPLES EVIDENCE SOME OF THE ECONOMIC ADVANTAGES THAT HAVE BEEN ASSOCIATED WITH MARRIAGE ..... 21

CONCLUSION ..... 23

# TABLE OF AUTHORITIES

Page(s)

## CASES

*Baskin v. Bogan*,
766 F.3d 648 (7th Cir.), *cert. denied*, 135 S. Ct. 316 (2014) ..... 2

*Bostic v. Schaefer*,
760 F.3d 352 (4th Cir.), *cert. denied*, 135 S. Ct. 308 *and* 135 S. Ct. 314 *and* 135 S. Ct. 286 (2014) ..... 2

*DeBoer v. Snyder*,
973 F. Supp. 2d 757 (E.D. Mich.), *rev'd*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 135 S. Ct. 1039 *and* 135 S. Ct. 1040 *and* 135 S. Ct. 1040 *and* 135 S. Ct. 1041 (2015) ..... 2

## OTHER AUTHORITIES

M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. & Soc. Pol'y 1 (2004) ..... 18

M.V. Lee Badgett & Jody L. Herman, The Williams Institute, UCLA School of Law, *Patterns of Relationship Recognition by Same-Sex Couples in the United States* (2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/ uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf ..... 17

## TABLE OF AUTHORITIES—Continued

Page(s)

M.V. Lee Badgett & Christy Mallory, The Williams Institute, UCLA School of Law, *Patterns of Relationship Recognition for Same-Sex Couples: Divorce and Terminations* (2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Mallory-Divorce-Terminations-Dec-2014.pdf ..... 17, 13

Gary Becker, *A Treatise on the Family: Enlarged Edition* (1993) ..... 21

Marcus Dillender, *The Death of Marriage? The Effects of New Forms of Legal Recognition on Marriage Rates in the United States*, 51 Demography 563 (2014) ..... 18

Gary J. Gates, The Williams Institute, UCLA School of Law, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey* (2015), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf ..... *passim*

## TABLE OF AUTHORITIES—Continued

Page(s)

Gary J. Gates, The Williams Institute, UCLA School of Law, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee: Analyses of the 2013 American Community Survey* (2015), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-KY-MI-OH-TN-ACS2013-March-2015.pdf ..... *passim*

Gary J. Gates, The Williams Institute, UCLA School of Law, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey* (2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-families-nhis-sep-2014.pdf ..... 7, 16

Gary J. Gates, The Williams Institute, UCLA School of Law, *LGBT Parenting in the United States* (2013), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf ..... 20

Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why* (2010), *available at* http://williamsinstitute.law.ucla. edu/wp-content/uploads/Gates-Who-Gets-Counted-Aug-2010.pdf ..... 8

## TABLE OF AUTHORITIES—Continued

Page(s)

Gary J. Gates & Abigail M. Cooke, The Williams Institute, UCLA School of Law, *United States Census Snapshot: 2010* (2011), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf ..... 7, 9

Robert I. Lerman, Urban Inst. & American Univ., *Marriage and the Economic Well-Being of Families with Children: a Review of the Literature* (2002), *available at* http://www.urban.org/UploadedPDF/410541_LitReview.pdf ..... 21

Frank Newport, *Alabama Verdict on Same-Sex Marriage Highlights Pending U.S. Supreme Court Ruling*, Gallup.com (Mar. 5, 2015), http://www.gallup.com/opinion/polling-matters/181823/alabama-verdict-sex-marriage-highlights-pending-supreme-court-ruling.aspx ..... 15

Pew Research Center, *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times* (2013), *available at* http://www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pd ..... 16, 17

## TABLE OF AUTHORITIES—Continued

**Page(s)**

Pew Research Center, *The Decline of Marriage and Rise of New Families* (2014), *available at* http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf ..... 16

Michael Rosenfeld, *Couple Longevity in the Era of Same-Sex Marriage in the United States*, 76 J. Marriage & Fam. 905 (2014) ..... 17

Mircea Trandafir, *The Effect of Same-Sex Marriage Laws on Different-Sex Marriage: Evidence from the Netherlands*, 51 Demography 317 (2014) ..... 18

U.S. Bureau of Labor Statistics, *Highlights of Women's Earnings in 2013*, Report 1051 (2014), *available at* http://www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf ..... 20, 21

U.S. Census Bureau, American FactFinder, 2013 American Community Survey 1-year Estimates: Age and Sex, No. S0101 (2013), *available at* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_S0101&prodType=tabl ..... 15

## TABLE OF AUTHORITIES—Continued

Page(s)

Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (Broadway Books 2001) .....21

## INTEREST OF AMICUS CURIAE[1]

Gary J. Gates is the Blachford-Cooper Distinguished Scholar and Research Director at the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law. He is the Director of the UCLA Census Regional Data Center, and a member of the Scientific Advisory Committee of the U.S. Census Bureau and the Data Users Advisory Committee of the Bureau of Labor Statistics.

Gates coauthored *The Gay and Lesbian Atlas* and is a recognized expert on the geography and demography of the lesbian, gay, bisexual, and transgender ("LGBT") population. He conducted the first significant research study using U.S. Census data to explore characteristics of same-sex couples. He publishes extensively on the demographic and economic characteristics of the LGBT population. Many national and international media outlets routinely feature his work. In addition, Gates regularly consults with federal and state governments and non-governmental organizations on data collection issues regarding the LGBT population.

As a scholar of sexual orientation and gender identity law and public policy, Gates has a substantial interest in the issues before this Court. Gates has conducted extensive research and authored numerous studies regarding the geographic, demographic, and

---

[1] No counsel for any party authored this brief in whole or in part. No person or entity, other than amicus and his counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Petitioners and respondents have provided written consent to the filing of this amicus brief.

economic characteristics of same-sex couples and their families in the United States.

Several courts have relied on Gates' expertise and research in invalidating state prohibitions on same-sex marriage. *See, e.g.*, *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 763-64, 771 (E.D. Mich.) (relying on Gates' "highly credible" expert testimony in holding Michigan's prohibition on same-sex marriage unconstitutional), *rev'd*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, 135 S. Ct. 1039 *and* 135 S. Ct. 1040 *and* 135 S. Ct. 1040 *and* 135 S. Ct. 1041 (2015); *Baskin v. Bogan*, 766 F.3d 648, 663, 668-69 (7th Cir.) (relying on Gates' research in holding Indiana and Wisconsin's same-sex marriage prohibition unconstitutional), *cert. denied*, 135 S. Ct. 316 (2014); *Bostic v. Schaefer*, 760 F.3d 352, 382 (4th Cir.) (relying on Gates' research in holding Virginia's same-sex marriage prohibition unconstitutional), *cert. denied*, 135 S. Ct. 308 *and* 135 S. Ct. 314 *and* 135 S. Ct. 286 (2014).

Gates believes that his expertise and perspective as a scholar may likewise help this Court more fully appreciate the impact that laws limiting the ability of same-sex couples to marry and raise families have on the LGBT population.

## SUMMARY OF ARGUMENT

This brief presents and analyzes available demographic data regarding married and unmarried same-sex couples[2] and their children in the United States in general, and in Kentucky, Michigan, Ohio, and Tennessee in particular, in order to assist the Court in understanding the impact that its decision may have on same-sex couples and their children. It relies primarily on data from five sources:

- **2010 U.S. Census:** The U.S. Census Bureau has been collecting data on same-sex couples for more than two decades, including as part of the 1990, 2000, and 2010 censuses.
- **2013 American Community Survey ("ACS"):** The ACS is an annual survey conducted by the U.S. Census Bureau that provides demographic information about the U.S. population.
- **2013 National Health Interview Survey ("NHIS"):** The NHIS is an annual survey conducted by the U.S. Census Bureau for the National Center for Health Statistics of the Centers for Disease Control and Prevention. The NHIS is one of our nation's primary sources for health information on the U.S. population.
- **2013 Pew Research Center LGBT Survey:** This survey of LGBT adults in the United States

---

[2] When this brief speaks about "same-sex couples," we mean couples (both married and unmarried) who are living together in the same household. Of course there are also many same-sex couples who are not living together, as well as many LGBT individuals who are currently not coupled but who will be in the future.

asked questions about attitudes regarding the purpose of and desire for marriage.

- **2015 Gallup Daily Tracking Survey**: This survey asked respondents whether they identify as lesbian, gay, bisexual, or transgender, and whether they are married to or cohabiting with a same-sex spouse or partner.

The data show that:

**(I) Same-Sex Couples Are Common Throughout The United States And The Sixth Circuit And Many Same-Sex Couples Are Raising Children, Including A Disproportionate Number Of Adopted And Foster Children.**

In the United States, there are approximately 690,000 same-sex couples (married and unmarried). They live in all 50 states and in 93% of U.S. counties. In Kentucky, Michigan, Ohio, and Tennessee combined, there are approximately 56,000 same-sex couples residing in 94% of these states' counties.

Almost one-fifth of same-sex couples (married and unmarried) in the United States are raising children under age 18. In other words, nationally, more than 122,000 same-sex-couple households are raising approximately 210,000 children under age 18. In Kentucky, Michigan, Ohio, and Tennessee, same-sex-couple households are raising more than 18,000 children under age 18.

Same-sex couples, particularly married same-sex couples, are more likely to be raising adopted and foster children than their different-sex counterparts. Nationally, same-sex couples (married and unmarried) are approximately three times more likely than their married different-sex counterparts to be raising an

adopted or foster child. Married same-sex couples are more than five times more likely to be raising these children when compared to their different-sex counterparts. Nearly 27,000 same-sex couples are raising an estimated 58,000 adopted and foster children in the United States. More than 26,000 of those children (46%) are being raised by married same-sex parents. An estimated 3,260 adopted and foster children are being raised by same-sex couples (married and unmarried) in Kentucky, Michigan, Ohio, and Tennessee.

**(II) Many LGBT Adults Want To Marry; They Have Attitudes Toward Marriage, And Divorce Rates, Similar To The General Population; And Allowing Same-Sex Couples To Marry Does Not Alter The Behavior Of Different-Sex Couples.**

Married same-sex couples are present in all parts of the country, although (not surprisingly) the portion of same-sex couples who are married is much higher in regions of the country where marriage for same-sex couples has been available for a longer period of time. In 2013, an estimated 11% of same-sex couples in Kentucky, Michigan, Ohio, and Tennessee reported that they were married. Unmarried gay men and lesbians are more likely than the general population of unmarried adults to say that they want to be married.

Just like the general population, LGBT adults report that love, companionship, and making a lifelong commitment are the three most important reasons why a couple would marry. Several studies suggest that same-sex couple relationships are as stable and durable as different-sex relationships. Data also suggest that same-sex couples have divorce and dissolution rates similar to different-sex married couples.

Allowing same-sex couples to marry has no impact on marriage rates or non-marital birth rates in the general population. Studies conducted in places where same-sex marriage is legal find no evidence that allowing same-sex couples to marry reduces the rate of different-sex marriages or increases the rate of non-marital births.

**(III) Same-Sex Couples With Children Experience Economic Vulnerability.**

Many same-sex couples raising children are economically vulnerable, and same-sex couples raising children are more economically vulnerable than their different-sex counterparts. Nationally, the median annual household income of same-sex couples (married and unmarried) with children under age 18 in the home is more than 10% lower than the median annual household income of comparable married different-sex couples. In Kentucky, Michigan, Ohio, and Tennessee, the median annual household income of same-sex couples with children under age 18 in the home is nearly 30% less than the median annual household income of comparable married different-sex couples.

**(IV) Married Same-Sex Couples Evidence Economic Advantages Commonly Associated With Marriage.**

Substantial research argues that marriage reduces economic vulnerability in couples and families. That economic stability can contribute to better outcomes for children raised by married parents. Even though the availability of marriage for same-sex couples is relatively recent for most couples in the United States, the economic benefits related to marriage are evident among same-sex couples in ways that are similar to their different-sex counterparts.

Like their different-sex counterparts, married same-sex couples have higher median household incomes and home ownership rates when compared to unmarried same-sex couples. Among same-sex couples raising children under age 18, the median household income of married couples is 43% higher than that of unmarried couples.

## ARGUMENT

### I. SAME-SEX COUPLES ARE COMMON THROUGHOUT THE UNITED STATES AND THE SIXTH CIRCUIT AND ARE RAISING MANY CHILDREN, INCLUDING AN OUTSIZED SHARE OF ADOPTED AND FOSTER CHILDREN

#### A. Same-Sex Couples, Married And Unmarried, Are Common Throughout The United States And Reflect The Diversity Of Our Country

Analyses from the 2013 NHIS indicate that, in the United States, there are approximately 690,000 same-sex couples (married and unmarried), meaning that nearly 1.4 million Americans are members of a same-sex couple.[3] This is an increase over the 2010 Census, in which 646,464 same-sex couples in the United States identified as such.[4] As of 2013, in Kentucky, Michigan,

---

[3] Gary J. Gates, The Williams Institute, UCLA School of Law, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey* 1 (2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-families-nhis-sep-2014.pdf.

[4] Gary J. Gates & Abigail M. Cooke, The Williams Institute, UCLA School of Law, *United States Census Snapshot: 2010* at 1 (2011), *available at* http://williamsinstitute.law.ucla.edu/wp-

Ohio, and Tennessee, there were nearly 112,000 individuals in nearly 56,000 same-sex couples.[5] Table 1 provides state-specific information:

---

content/uploads/Census2010Snapshot-US-v2.pdf. Since 1990, it has been possible to identify same-sex couples using U.S. Census data by combining responses to Census questions regarding sex and relationship to the householder. Same-sex couples are defined as such when a householder (Person 1 on the survey form) identifies another individual aged 16 or older as being of the same sex and as his or her "husband/wife" or "unmarried partner." Gary J. Gates, The Williams Institute, UCLA School of Law, *Same-sex Couples in US Census Bureau Data: Who Gets Counted and Why* 3 (2010), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Who-Gets-Counted-Aug-2010.pdf. A post-Census follow-up survey of same-sex couples suggests that approximately one in seven same-sex couples who live in the United States (14.4%) did not identify themselves in the 2010 Census or were otherwise not counted. *Id.* Approximately 9.7% identified themselves as "roommates" or "non-relatives." *Id.* For many, this was because they were concerned about confidentiality, they understood the Census was a federal survey and the federal government did not recognize their relationships, the Census did not have a question about sexual orientation, and/or they understood their relationship in a way other than the responses provided on the Census forms. *Id.* The remaining 4.7% were couples in which neither partner was "Person 1" (the householder) on the Census form—for example, if a same-sex couple lived in the home of another person who was designated as householder. *Id.*

[5] Gary J. Gates, The Williams Institute, UCLA School of Law, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee: Analyses of the 2013 American Community Survey* 1 (2015), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-KY-MI-OH-TN-ACS2013-March-2015.pdf.

**Table 1. Estimated number of same-sex couples, by jurisdiction**

| | |
|---|---|
| United States | 690,000 |
| Sixth Circuit States | 55,902 |
| Kentucky | 7,680 |
| Michigan | 15,581 |
| Ohio | 21,010 |
| Tennessee | 11,632 |

Same-sex couples live in all parts of the country. In the 2010 Census, same-sex couples were identified in all 50 states, in 93% of counties in the United States,[6] and in 94% of counties in Kentucky, Michigan, Ohio, and Tennessee.[7]

Same-sex couples also reflect the demographic diversity of our country. A small majority of same-sex couples (married and unmarried) are female (51%). A higher proportion of married same-sex couples are female (53%).[8] In Kentucky, Michigan, Ohio, and Tennessee, 54% of same-sex couples are female.[9] In the United States, the racial and ethnic distributions of individuals in same-sex couples and different-sex married couples are similar. In total, 23% of individuals in same-sex couples (married and

---

[6] Gates & Cooke, *supra*, at 1.

[7] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, at 3.

[8] Gary J. Gates, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey* 4 (2015) (hereinafter *ACS 2013 report*), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf.

[9] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 3.

unmarried) are members of racial or ethnic minorities, compared to 26% of individuals in different-sex married couples. The racial and ethnic composition of individuals in married same-sex couples is nearly the same as that of all same-sex couples: 23% are members of a racial or ethnic minority. The proportions of same-sex couples (married and unmarried) within specific racial and ethnic groups are very similar to those among married different-sex couples.[10]

### B. Same-Sex Couples, And Particularly Married Same-Sex Couples, Are Raising Large Numbers Of Children And An Outsized Share Of Adopted And Foster Children

Almost one in five same-sex couples (married and unmarried) in the United States (18%) are raising children under age 18. Same-sex couples raising children have, on average, 1.7 children in the home. In other words, nationally, nearly 122,000 same-sex-couple households include almost 210,000 children under age 18 in their homes.[11]

Married same-sex couples are more likely to have children than same-sex couples in general. More than a quarter (27%) of married same-sex couples have children under age 18. As of 2013, one third of children being raised by same-sex couples (34%), approximately 71,000, were being raised by married parents. In states where same-sex couples could legally marry in

---

[10] Gates, *ACS 2013 report*, *supra*, at 4.

[11] Gates, *ACS 2013 report*, *supra*, at 5.

2013, more than half of the children being raised by same-sex couples (51%) had married parents.[12]

The portion of same-sex couples raising children under age 18 is consistent (18%) in the Northeast, the Midwest, and the South. In the West, the figure is 17%.[13] In Kentucky, Michigan, Ohio, and Tennessee, 19% of same-sex couples are raising children under age 18 in their homes. Nearly 11,000 same-sex-couple households in these states include more than 18,000 children.[14]

Even though same-sex couples (married and unmarried) are less likely to be raising children than married different-sex couples,[15] they are much more likely to have adopted or foster children. Nationally, same-sex couples are approximately three times more likely than their married different-sex counterparts to be raising an adopted or foster child. Approximately 4% of same-sex couples have an adopted or foster child under age 18. Among married same-sex couples, 8% have an adopted or foster child under age 18 compared to 1.5% of married different-sex couples, making married same-sex couples more than five times more

---

[12] Gates, *ACS 2013 report*, *supra*, at 5. States where same-sex couples could legally marry in 2013 include Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Washington. Hawaii allowed same-sex couples to marry beginning in December 2013, but the State is not included since marriage for same-sex couples was available only for a short period of time in that year.

[13] Gates, *ACS 2013 report*, *supra*, at 5.

[14] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 4.

[15] Gates, *ACS 2013 report*, *supra*, at 5.

likely to have these children than their married different-sex counterparts.[16] In Kentucky, Michigan, Ohio, and Tennessee, perhaps due to more restrictive policies governing adoption by same-sex couples, the differences are somewhat less stark but, even in those states, same-sex couples are twice as likely as married different-sex couples to have an adopted or foster child (4% versus 2%, respectively).[17]

The differences in adoption and fostering among same-sex couples and married different-sex couples are even greater when considering only couples with children under age 18. Nationally, among couples with children under age 18 in the home, 22% of same-sex couples have an adopted or foster child compared to just 3% of married different-sex couples. Nearly three in ten married same-sex couples with children (28%) have an adopted or foster child.[18] In Kentucky, Michigan, Ohio, and Tennessee, 19% of same-sex couples with children have an adopted or foster child.[19]

---

[16] Gates, *ACS 2013 report*, *supra*, at 7-8.

[17] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 5.

[18] Gates, *ACS 2013 report*, *supra*, at 8.

[19] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 5.

**Fig. 1. Percentage of Same-Sex Couples Raising Adopted or Foster Children Under Age 18, by Presence of Children, Jurisdiction, and Couple Type**

Nearly 27,000 same-sex couples are raising an estimated 58,000 adopted and foster children in the United States. More than 26,000 of those children (46%) are being raised by married same-sex parents.[20] An estimated 3,260 adopted and foster children are being raised by same-sex couples (married and unmarried) in Kentucky, Michigan, Ohio, and Tennessee.[21]

In the United States, most children being raised by same-sex couples (married and unmarried) are biologically related to one of their parents. More than half (51%) of the children of same-sex couples were identified as a biological child of one spouse or partner in the same-sex couple. In addition, 10% were identified as the step-child of one parent, which likely also indicates a biological relationship to at least one partner. Nearly one in five children being raised by same-sex couples are adopted or fostered (19%) or are grandchildren, siblings, or other children (20%).[22]

In Kentucky, Michigan, Ohio, and Tennessee, an estimated 65% of children being raised by same-sex couples are biological (51%) or step-children (14%), and 14% of children being raised by same-sex couples are adopted (13%) or fostered (1%), and 21% are grandchildren, siblings and other children.[23]

---

[20] Gates, *ACS 2013 report*, *supra*, at 8.

[21] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 5.

[22] Gates, *ACS 2013 report*, *supra*, at 8.

[23] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 5.

## II. MANY LGBT ADULTS WANT TO MARRY; THEY HAVE ATTITUDES TOWARD MARRIAGE, AND DIVORCE RATES, SIMILAR TO THE GENERAL POPULATION; AND ALLOWING SAME-SEX COUPLES TO MARRY DOES NOT ALTER THE BEHAVIOR OF DIFFERENT-SEX COUPLES

As of February 2015, preliminary estimates indicate that more than 700,000 adults in the United States report being married to a same-sex spouse. This suggests that there are about 350,000 married same-sex couples.[24] Comparing these figures to the estimated 130,000 married same-sex couples in 2013,

---

[24] Gallup reports that 0.3% of adults are married to a same-sex spouse. *See* Frank Newport, *Alabama Verdict on Same-Sex Marriage Highlights Pending U.S. Supreme Court Ruling*, Gallup.com (Mar. 5, 2015), http://www.gallup.com/opinion/polling-matters/181823/alabama-verdict-sex-marriage-highlights-pending-supreme-court-ruling.aspx. Findings from the 2013 American Community Survey suggest that 76.7% of the population of the United States, approximately 316,000,000, are age 18 or older. *See* U.S. Census Bureau, American FactFinder, 2013 American Community Survey 1-year Estimates: Age and Sex, No. S0101 (2013), *available at* http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_S0101&prodType=tabl (choose "download" action). That means that there are approximately 242,000,000 adults in the country. If 0.3% of these adults have a same-sex spouse, then approximately 700,000 adults in the United States are married to a same-sex spouse. This implies that there are approximately 350,000 same-sex married couples, since the number of married couples is, by definition, half of the number of married individuals.

the number of married same-sex couples has more than doubled in the last year.[25]

Married same-sex couples are present in all parts of the country. Not surprisingly, the portion of same-sex couples who are married is much higher in regions of this country where marriage for same-sex couples has been available for a longer period of time. As of 2013, when an estimated 21% of same-sex couples in the country were married, 34% of same-sex couples in the Northeast were married, as were 23% in the West, 16% in the Midwest, and 15% in the South.[26] In 2013, an estimated 11% of same-sex couples in Kentucky, Michigan, Ohio, and Tennessee reported that they were married.[27]

A survey conducted by the Pew Research Center shows that, among unmarried gay men and lesbians, 56% of men and 58% of women say that they would like to be married someday.[28] This compares to 46% of the general population of unmarried adults.[29] The survey also revealed that LGBT adults (like the general population) believe that love, companionship, and

---

[25] *See* Gates, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey*, *supra*, at 1.

[26] Gates, *ACS 2013 report*, *supra*, at 3, 4.

[27] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 3.

[28] Pew Research Center, *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times* 71 (2013), *available at* http://www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pdf.

[29] Pew Research Center, *The Decline of Marriage and Rise of New Families* 23 (2014), *available at* http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf.

making a lifelong commitment are the three most important reasons why a couple would marry. LGBT individuals did give greater importance than the general population to legal rights and benefits.[30] This may not be surprising given that, for most LGBT individuals in the United States, the legal rights and benefits associated with marriage have only recently become available or remain unavailable.

Several studies suggest that same-sex-couple relationships are as stable and durable as different-sex relationships.[31] An analysis of four years of data from New Hampshire and Vermont shows that an average of 1.1% of married same-sex couples divorce per year compared to an average of 2% of married different-sex couples. The average dissolution rate among couples in civil unions or registered domestic partnerships in five states (California, New Hampshire, New Jersey,

---

[30] Pew Research Center, *Survey of LGBT Americans*, *supra*, at 68-69, 131 & n.47.

[31] M.V. Lee Badgett & Christy Mallory, The Williams Institute, UCLA School of Law, *Patterns of Relationship Recognition for Same-Sex Couples: Divorce and Terminations* (2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Mallory-Divorce-Terminations-Dec-2014.pdf (analyzing data from California, New Hampshire, New Jersey, Vermont, Washington, Washington, D.C., and Wisconsin); *see also* M.V. Lee Badgett & Jody L. Herman, The Williams Institute, UCLA School of Law, *Patterns of Relationship Recognition by Same-Sex Couples in the United States* 18-19 (2011) (analyzing data from California, Colorado, Connecticut, Hawaii, Maine, Nevada, New Hampshire, New Jersey, Vermont, Washington, and Washington, D.C.), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf; Michael Rosenfeld, *Couple Longevity in the Era of Same-Sex Marriage in the United States*, 76 J. Marriage & Fam. 905, 916 (2014).

Washington, and Wisconsin) and the District of Columbia was 1.7%.[32]

The evidence suggests no reason to believe that legalizing marriage for same-sex couples will cause either a decline in the marriage rates of different-sex couples or an increase in non-marital births among different-sex couples. Studies using data from places where same-sex couples can legally marry find no evidence that allowing same-sex couples to marry reduces the rate of different-sex marriages or increases the rate of non-marital births.[33]

In 2013, the portion of all children under age 18 being raised by married different-sex parents in the United States was slightly higher in states where same-sex couples could legally marry (65%) than in those where marriage was restricted to different-sex couples (64%). The average number of children under age 18 that married different-sex couples are raising is the same (1.9), regardless of the availability of marriage for same-sex couples.[34]

---

[32] Badgett & Mallory, *supra*, at 1.

[33] *See* Marcus Dillender, *The Death of Marriage? The Effects of New Forms of Legal Recognition on Marriage Rates in the United States*, 51 Demography 563, 582 (2014); Mircea Trandafir, *The Effect of Same-Sex Marriage Laws on Different-Sex Marriage: Evidence from the Netherlands*, 51 Demography 317, 337-38 (2014); M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. & Soc. Pol'y 1, 8 (2004).

[34] Gates, *ACS 2013 report*, *supra*, at 5.

## III. SAME-SEX COUPLES RAISING CHILDREN ARE ECONOMICALLY VULNERABLE

Nationally, the median annual household income of same-sex couples with children under age 18 in the home is more than 10% lower than the median annual household income of married different-sex couples with children ($75,000 versus $83,550).[35] In Kentucky, Michigan, Ohio, and Tennessee, the median annual household income of same-sex couples with children under age 18 in the home is nearly 30% less than the median annual household income of comparable married different-sex couples ($56,000 versus $79,000, respectively).[36]

Poverty rates among children under age 18 being raised by same-sex couples also evidence economic disadvantage. In 2013, nearly one in five children being raised by same-sex couples (24%) were living in poverty compared to 11% of children being raised by married different-sex couples.[37] The difference in poverty rates between children being raised by same-sex couples versus married different-sex couples is even larger in Kentucky, Michigan, Ohio, and Tennessee (35% versus 10%, respectively).[38]

Several factors likely contribute to the relative economic disadvantage of same-sex couples with children. *First*, research suggests that lesbian, gay,

---

[35] Gates, *ACS 2013 report*, *supra*, at 7.

[36] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 4.

[37] Gates, *ACS 2013 report*, *supra*, at 7.

[38] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 4.

and bisexual parents (including, presumably, some who are in same-sex couples) are, on average, younger than their different-sex counterparts.[39] In fact, individuals in same-sex couples raising children are, on average, nearly three years younger than their different-sex counterparts.[40] In Kentucky, Michigan, Ohio, and Tennessee, the average age of same-sex parents is more than five years younger than the average age of married different-sex parents.[41]

*Second*, same-sex couples with children are disproportionately female, and in the United States, women, on average, have lower incomes than men.[42] More than three-quarters of same-sex couples raising children under age 18 are female (77%).[43] In Kentucky, Michigan, Ohio, and Tennessee, 73% of same-sex couples with children are female.[44]

*Third*, same-sex couples raising children are disproportionately members of racial and ethnic minorities (predominantly African-American and Latino/as), compared to married different-sex couples.

---

[39] Gary J. Gates, The Williams Institute, UCLA School of Law, *LGBT Parenting in the United States* 4 (2013), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf.

[40] Gates, *ACS 2013 report*, *supra*, at 6.

[41] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 4.

[42] Gates, *ACS 2013 report*, *supra*, at 7; U.S. Bur. of Labor Statistics, *Highlights of Women's Earnings in 2013*, Report 1051, at 2-3 & chart 2 (2014), *available at* http://www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf.

[43] Gates, *ACS 2013 report*, *supra*, at 7.

[44] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 4.

Among racial and ethnic minorities in the United States, African-Americans and Latino/as have lower incomes, on average, than White persons.[45] African-Americans and Latino/as comprise 27% of those in same-sex couples with children under age 18 in the home, compared to 25% of their counterparts in married different-sex couples.[46] In Kentucky, Michigan, Ohio, and Tennessee, 18% of individuals in same-sex couples with children are African-American or Latino/a compared to just 11% of their different-sex married counterparts.[47]

## IV. MARRIED SAME-SEX COUPLES EVIDENCE SOME OF THE ECONOMIC ADVANTAGES THAT HAVE BEEN ASSOCIATED WITH MARRIAGE

Substantial research suggests that marriage reduces economic vulnerability in couples and in families.[48] Even though the availability of marriage for same-sex couples is relatively recent for most couples in the United States, findings from the 2013 American Community Survey suggest that the

---

[45] *See* U.S. Bur. of Labor Statistics, *Highlights of Women's Earnings in 2013*, *supra*, at 2-3 & chart 2 (2014).

[46] Gates, *ACS 2013 report*, *supra*, at 7.

[47] Gates, *Demographics of Same-sex Couples in Kentucky, Michigan, Ohio, and Tennessee*, *supra*, at 4.

[48] *E.g.*, Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (Broadway Books 2001); Gary Becker, *A Treatise on the Family: Enlarged Edition* (1993); Robert I. Lerman, Urban Inst. & American Univ., *Marriage and the Economic Well-Being of Families with Children: a Review of the Literature* (2002), *available at* http://www.urban.org/UploadedPDF/410541_LitReview.pdf.

economic advantages associated with marriage are evident among same-sex couples in ways that are similar to their different-sex counterparts.

Married same-sex couples have a median household income that is approximately 27% higher than the median income of unmarried same-sex couples. Among same-sex couples raising children under age 18, the median household income of married couples is 43% higher than that of unmarried couples ($97,000 versus $67,900, respectively).[49] Only 9% of children being raised by married same-sex couples live in poverty compared to 32% of children being raised by unmarried same-sex couples.[50] Home ownership is also higher among married same-sex couples. More than 71% of married same-sex couples own their home compared to 65% of unmarried same-sex couples.[51]

---

[49] Gates, *ACS 2013 report*, *supra*, at 7.

[50] Gates, *ACS 2013 report*, *supra*, at 7.

[51] Gates, *ACS 2013 report*, *supra*, at 5.

## CONCLUSION

In light of the foregoing, and for the reasons set forth by petitioners, this Court should reverse.

Respectfully submitted,

ADAM P. ROMERO
THE WILLIAMS INSTITUTE
UCLA SCHOOL OF LAW
385 Charles E. Young Dr.
Los Angeles, CA 90095
(310) 825-8858

J. SCOTT BALLENGER
*Counsel of Record*
MELISSA ARBUS SHERRY
ANGELA WALKER*
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2200
scott.ballenger@lw.com

*Admitted in California only; all work supervised by a member of the DC Bar

*Counsel for Amicus Curiae*

March 6, 2015